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United States Attorney
SANDRA B. RIGGS
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Attorneys for the Plaintiff

FILED
2008 JUL 14 PM 2:57
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ________ DEPUTY

'08 CV 1262 WQH NLS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA, Plaintiff, v. 1.55 ACRES OF LAND, MORE OR LESS, SITUATE IN SAN DIEGO COUNTY, STATE OF CALIFORNIA; and KUNWAR S. KUMAR, NAOMI ASCHNER, SAN DIEGO RURAL FIRE PROTECTION DISTRICT COMMUNITY FACILITIES DISTRICT NO. 04-1 AND SAN DIEGO COUNTY TAX ASSESSOR AND COLLECTOR. Defendants.	Case No.: COMPLAINT IN CONDEMNATION With Declaration of Taking 40 U.S.C. § 3114

1. This is an action of a civil nature brought by the United States of America at the request of the Secretary of the Department of Homeland Security, through the Acting Executive Director, Facilities Management and Engineering, Department of Homeland Security, U.S. Customs and Border Protection, for the taking of property, under the power of eminent domain through a Declaration of Taking, and for the determination and award of just compensation to the owners and parties in interest.

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1358.

3. The authority for the taking of the land is under and in accordance with the authorities set forth in Schedule "A" attached hereto and made a part hereof.

4. The public purpose for which said property is taken is set forth in Schedule "B" attached

hereto and made a part hereof.

5. A general description of the land being taken is set forth in Schedule "C" attached hereto and made a part hereof. A plan showing the property being taken is shown on Schedule "D" attached hereto and made a part hereof.

6. The interest(s) being acquired in the property is described in Schedule "E" attached hereto and made a part hereof.

7. The names and addresses of known parties having or claiming an interest in said property are set forth in Schedule "G" attached hereto and made a part hereof.

8. Local and state taxing authorities may have or claim an interest in the property by reason of taxes and assessments due and exigible.

9. In addition to those persons named, there are or may be others who have or may have some interest in the property or interests to be taken, whose names are unknown to the Plaintiff, and such persons are made parties in the action under the designation "Other Interested Parties."

WHEREFORE, Plaintiff demands judgment that the property and interests be condemned, and that just compensation for the taking be ascertained and awarded, and such other relief as may be lawful and proper.

DATED: July 14, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

SANDRA B. RIGGS
Special Assistant U.S. Attorney
Attorneys for Plaintiff

SCHEDULE "A"

AUTHORITY FOR THE TAKING

The property is taken under and in accordance with the Act of Congress approved on February 26, 1931, as 46 Stat. 1421 and codified at 40 U.S.C. Section 3114, and the Act of Congress approved August 1, 1888, as 25 Stat. 357 and codified at 40 U.S.C. Section 3113, and any acts supplementary thereto and amendatory thereof; the Act of Congress approved September 30, 1996, as Public Law 104-208, Division C, Section 102, Stat. 3009-546, 3009-554, as amended and codified at 8 U.S.C. Section 1103(b) & note; and the Act of Congress approved October 4, 2006, as Public Law 109-295, Title II, 120 Stat. 1355, which appropriated the funds which shall be used for the taking.

SCHEDULE "B"
PUBLIC PURPOSE

The public purpose for which said property is taken is to construct, install, operate, and maintain roads, fencing, vehicle barriers, security lighting, and related structures designed to help secure the United States/Mexico border within the State of California.

SCHEDULE "C"
LEGAL DESCRIPTION

Tract: SDC-BRF-813E

A strip of land situated within fractional Section 27, Township 18 South, Range 3 East, of the San Bernardino Principle Meridian, County of San Diego, State of California. Coordinate value datum; California State Plane, NAD 83, Zone 6. Entire property having an assessor's parcel numbers 652-150-0700, 652-150-0800 and 652-150-1100 and more particularly described as follows:

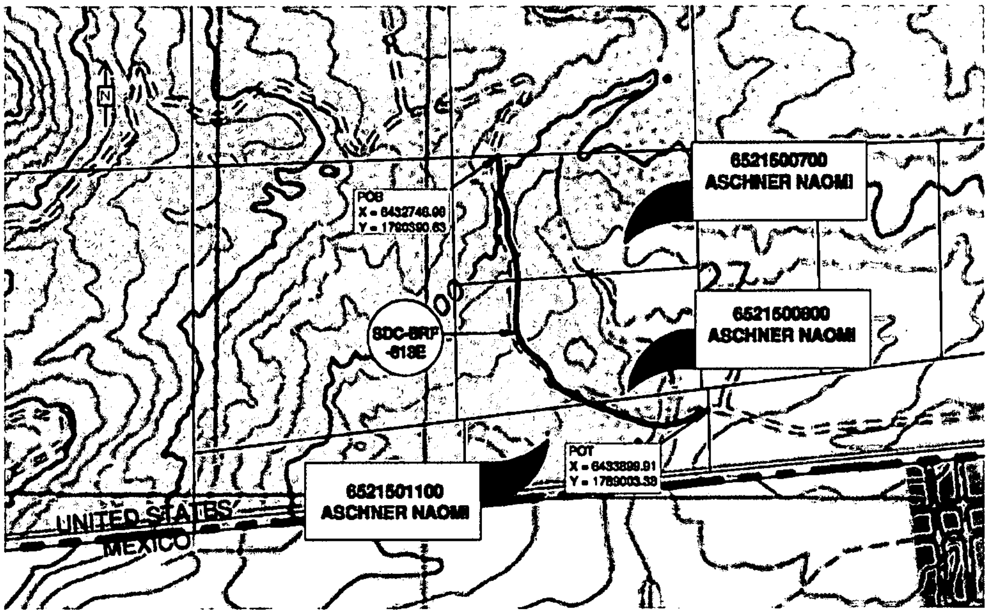
Said strip being 2243.54 feet in length, 30 feet in width, parallel to and 15 feet to the left of and 15 feet to the right of and measured at right angles to the following described centerline.

Beginning at a point on the Northerly property boundary of said parcel, having an assessor's parcel numbers 652-150-0700. Said point having a coordinate value of X= 6432746.96 and Y= 1790390.63.

Thence, meandering along the centerline of the existing road in a Southeasterly direction, a distance of approximately 2243.54 feet in length to the Point-of-Termination. Said P.O.T being the Easterly property boundary of A.P.N. 652-150-1100 and having a coordinate value of X= 6433899.91 and Y= 1789003.38.

Said strip of land containing an area of 1.55 acres more or less.

SCHEDULE "D"


N
POB
X = 6432746.98
SDC-BRF
-813E
6521500700
ASCHNER NAOMI
6521500800
ASCHNER NAOMI
27
6521501100
ASCHNER NAOMI
POT
X = 6433899.91
Y = 1789003.38
UNITED STATES
MEXICO

Tract: SDC-BRF-813E:

A strip of land situated within partial Section 27, Township 18 South, Range 3 East, of the San Bernardino Principle Meridian, the entire parcel having an assessor's parcel numbers 652-150-0700, 652-150-0800 and 652-150-1100.

Said strip of land containing an area of 1.55 acres more or less.

▬ PROPOSED TAKING (Acquisition)

SCHEDULE "E"
ESTATE TAKEN

Tract No. SDC-BRF-813E:
A perpetual and assignable easement and right-of-way in, over and across the land described in Schedule "C" for the location, construction, operation, maintenance, alteration and replacement of a road and appurtenances thereto; together with the right to trim or remove any vegetative or structural obstacles that interfere with the right-of-way; subject to minerals and rights appurtenant thereto, and to existing easements for public roads, highways, public utilities, railroads and pipelines; reserving, however, to the owners, their successors and assigns, the right to use the surface of such land as access to their adjoining land or for any other use consistent with its use as a road.

SCHEDULE "G"
NAMES AND ADDRESSES OF INTERESTED PARTIES

Naomi Aschner
P.O. Box 459
Tecate, California 91980
or
c/o Craig Sherman, Esq.
1901 First Avenue, Suite 335
San Diego, California 92101

Kunwar S. Kumar
240 W. 14th Street, Apartment 5
New York, New York 10011-7218

San Diego Rural Fire Protection District Community
Facilities District No. 04-1
14145 Highway 94
Jamul, CA 91935

TAXATION AUTHORITY:
County of San Diego Assessor's Office
1600 Pacific Highway
Room 103
San Diego, CA 92101-2429

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

2008 JUL 14 PM 2:57

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY ____ DEPUTY

I. (a) PLAINTIFFS

THE UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff ________
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) 619-557-6958
SANDRA B. RIGGS, SPECIAL ASSISTANT US ATTORNEY
880 FRONT STREET, RM 6293, SAN DIEGO, CA 92101

DEFENDANTS

1.55 ACRES OF LAND, MORE OR LESS, SITUATE IN SAN DIEGO COUNTY, STATE OF CALIFORNIA; and NAOMI ASCHNER, ET AL.

County of Residence of First Listed Defendant ________
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '08 CV 1262 WQH NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- [X] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- [X] 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- [X] 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
40 U.S.C. Section 3114

Brief description of cause:
Land Condemnation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes [X] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ________ DOCKET NUMBER ________

DATE 7/14/08

SIGNATURE OF ATTORNEY OF RECORD [signature: Sandra B. Riggs]

SANDRA B. RIGGS, Civil Division
U.S. Attorneys Office

FOR OFFICE USE ONLY

RECEIPT # ________ AMOUNT ________ APPLYING IFP ________ JUDGE ________ MAG. JUDGE ________